

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

Michael Barrett, IV, et al.,)
)
Plaintiffs,)
)
v.) 2:11-cv-04242-NKL
)
Donald M. Claycomb, et al.,)
)
Defendants.)

**MOTION TO EXPEDITE MOTION FOR PRELIMINARY INJUNCTION OR,
IN THE ALTERNATIVE, TO ENFORCE DEFENDANTS' AGREEMENT
TO CONSENT TO EXTENSION OF TEMPOARY RESTRAINING ORDER**

Come now Plaintiffs, pursuant to FED. R. CIV. P. 65, and move this Court to expedite consideration of Plaintiffs' motion for preliminary injunction. In support, Plaintiffs state:

1. In this action, Plaintiffs challenge the constitutionality of the drug testing policy adopted by the Board of Regents of Linn State Technical College on or about June 17, 2011.
2. On September 14, 2011, this Court entered a temporary restraining order enjoining any further testing of samples and any reporting of results to the school.
3. On September 23, 2011, this Court indicated that a hearing would be held on Plaintiffs' motion for preliminary injunction on October 25, 2011. The selection of that date was premised on Defendants' representation, before this Court, that they would consent to an extension of the temporary restraining order until the hearing.
4. The parties agreed to, and this Court entered, a briefing schedule on the motion for preliminary injunction that was based on the shared understanding that the temporary restraining order would remain in effect. Under the current schedule, Defendants'

- opposition is due on October 5, 2011, and Plaintiffs' reply is due on October 12, 2011.
5. On September 23, 2011, this Court considered, ex parte, Plaintiffs' emergency motion for extension of the temporary restraining order. At the close of the hearing, this Court extended the temporary restraining order for 14 additional days. In addition, this Court modified the temporary restraining order to clarify that it applies only to drug testing conducted pursuant to the policy adopted by the Board of Regents of Linn State Technical College on or about June 17, 2011.
 6. Pursuant to Rule 65, the temporary retaining order cannot be further extended unless "the adverse party consents to a longer extension."
 7. Subsequent to September 23, 2011, the parties have engaged in discussions in an attempt to facilitate Defendants' consent to an extension of the temporary restraining order until the hearing on October 25, 2011. Defendants' consent is now contingent on further modifications to the temporary restraining order to which Plaintiffs object.
 8. The temporary restraining order will lapse on October 7, 2011. Absent a preliminary injunction, Plaintiffs and the putative class they seek to represent will suffer irreparable harm.
 9. If a hearing is necessary given the lack of apparent factual dispute, Plaintiffs respectfully request it be conducted prior to the expiration of the temporary restraining order on a date other than October 3, 2011, but in time to allow consideration of the motion on or before October 7, 2011.
 10. In the alternative, Plaintiffs request this Court enforce Defendants' agreement to consent to an extension of the temporary restraining order through October 25, 2011.

WHEREFORE Plaintiffs respectfully request this Court enter an order expediting consideration of their motion for preliminary injunction and establishing a schedule that will permit this Court to issue a decision on the motion on or before October 7, 2011, or, in the alternative, enforce Defendants' agreement to consent to an extension of the temporary restraining order through October 25, 2011.

Respectfully submitted,

/s/ Anthony E. Rothert
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ATTORNEYS FOR PLAINTIFF

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served by operation of the Court CM/ECF system upon counsel for each of the Defendants on September 29, 2011.

/s/ Anthony E. Rothert